

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Request of Covad to
Define and Price a Line Sharing over DLC
UNE to be offered by Qwest

PUC Docket No. P-421/CI-02-293
OAH Docket No. 12-2500-14765-2

ORDER DENYING MOTION TO ADD DOCUMENTS

This matter is before Administrative Law Judge Steve M. Mihalchick on Qwest's Motion to Add Documents to the Record filed November 22, 2002. Qwest requests that it be allowed to add a November 6, 2002 letter from a Lucent Technologies manager to a Qwest representative regarding the Lucent Stinger DSLAM and the Lucent Technologies Stinger ATM Configuration Guide. Covad opposes both documents; the Department of Commerce opposes the letter.

Based upon argument of counsel in the briefs submitted, the Administrative Law Judge makes the following:

ORDER

Qwest's Motion to Add Documents to the Record is DENIED and references to the documents appearing at footnotes 123 and 125 of Qwest's Post Hearing Brief are STRICKEN.

Dated this 4th day of June, 2004

S/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

The hearing in this matter was held October 28 – 31, 2002. The first round of briefs was due November 22, 2002. Qwest filed its brief and this motion on that date. In its brief, Qwest cited the proposed documents, along with evidence in the hearing record, to support certain facts it was alleging. It now requests that the documents be added to the record because: (1) Both documents involve issues raised during the hearing and discussed by witnesses, (2) each witness had a different view of the capabilities of the Lucent Stinger and relied upon the Configuration Guide, (3) both documents "were part of the discovery requests in this case," and (4) the documents will aid the Commission by providing a neutral source of information.

Covad objects to both documents on the grounds that: (1) Both documents are untimely, (2) the Lucent letter is suspect for a number of reasons and prejudicial to Covad, (3) Qwest had numerous opportunities to put the Configuration Guide into the record during the hearing and did not do so.

The Department of Commerce does not object to the Configuration Guide, but does object to the Lucent letter because it is untimely and leaves the Department with no opportunity to cross-examine the preparer of the document and determine its accuracy.

Both documents are untimely. Moreover, neither of them provide any easily understood evidence on their own and would require further expert testimony as to their significance. To reopen the record for additional evidence at this time would unduly delay this proceeding.

S.M.M.